

FILED

MAY 12 2005

No. 05-35214

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

**IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT**

NATIONAL MEAT ASSOCIATION,

**Defendant-Intervenor-
Appellant**

v.

**UNITED STATES DEPARTMENT
OF AGRICULTURE, Animal and
Health Inspection Service, et al.**

And

**RANCHERS CATTLEMEN
ACTION LEGAL FUND UNITED
STOCKGROWERS OF AMERICA,**

Plaintiff-Appellee

No. 05-35214

**D.C. No. CV-05-00006-RFC
District of Montana,
Billings**

**RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA,**

Plaintiff – Appellee,

v.

No. 05-35264

**D.C. No. CV-05-00006-RFC
District of Montana,
Billings**

UNITED STATES DEPARTMENT OF :
AGRICULTURE, Animal and Plant :
Health Inspection Service; et al., :
: :
Defendants – Appellants. :
:

**REPLY OF AMERICAN MEAT INSTITUTE IN SUPPORT OF
MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN
SUPPORT OF APPELLANTS^{1/}**

A number of amici representing a wide spectrum of interests in the United States and Canadian beef industry have organized themselves into groups and joined in amicus briefs supporting the reopening of the border to importation of beef and cattle from Canada. R-Calf now seeks to strike them all, so that the Court hears only the narrow views of R-Calf's membership, made up almost entirely of cattle producers -- views that find no support in any amicus filing. Like other amici, AMI does not oppose allowing R-Calf time to respond to the various amicus briefs filed against its position. But we do urge the Court to accept those briefs so that it has before it the views of the rest of the beef industry and related interests in deciding whether to allow USDA to reopen the border.

¹ The amici that have joined together in filing of the brief that is the subject of the instant motion are: American Meat Institute (AMI), North American Meat Processors (NAMP), Southwestern Meat Association (SMA), Eastern Meat Packers Association (EMPA), American Association Of Meat Processors (AAMP), National Restaurant Association (NRA), and United Food And Commercial Workers (UFCA).

Other amici already have responded to most of the arguments R-Calf has put forward in its effort to avoid any amicus participation, and we will not repeat those responses here. R-Calf does make two points worthy of special mention, however. First, R-Calf complains that the various amici did not coordinate and file a single brief. Given the expedited briefing schedule set by the Court and the number and diversity of parties that find serious fault with the preliminary injunction entered below and will be significantly injured thereby, complete coordination simply was not feasible, particularly since many groups adversely affected by the preliminary injunction could not know one another's interest until the day the briefs are filed. More importantly, we submit that our brief reflects the very kind of coordination encouraged by the rules, as it represents a joint submission by several major meat industry trade associations, the largest association of restaurants, and an association that represents workers whose interests are being injured by the district court's preliminary injunction.

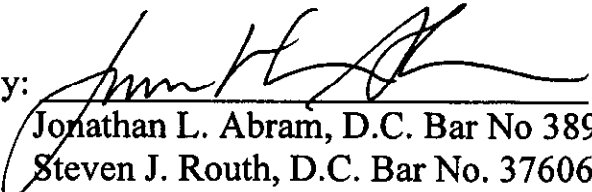
Second, R-Calf takes issue with our right to explain why we and much of the United States beef industry believe that the USDA could and should have reopened the United States-Canada border completely, and not limited its action just to cattle under thirty months of age and beef derived from those animals. The view we have expressed is very widely held in the industry: At this stage, with extensive testing regimes producing only a tiny handful of positive tests, with a

feed ban that has been in place in both countries for seven years, and with strict SRM-removal requirements being followed on both sides of the border, there is no longer any reason to impede the free trade between Canada and the United States that is required by United States law. It is true, that view was not presented below, because AMI filed its own lawsuit in Washington, D.C., and because USDA, accordingly, refused to acknowledge its final rule in fact was overly cautious. But that is no reason for this Court to ignore the views of major sectors of the American meat industry that, contrary to the district court's view that it acted imprudently, USDA has in fact proceeded in an unjustifiably limited manner by refusing to reopen the border completely, since doing so would not present an undue risk to public health or to the health of the American cattle herd.

Accordingly, we respectfully request that the Court grant our motion for leave to appear as amici curiae.

Respectfully submitted,

HOGAN & HARTSON, L.L.P.

By: 
Jonathan L. Abram, D.C. Bar No 389896
Steven J. Routh, D.C. Bar No. 376068
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
Telephone: (202) 637-5600
Facsimile: (202) 637-5910

Attorneys for Plaintiff
American Meat Institute

Dated: May 11, 2005

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May 2005, I have caused accurate copies of the Reply In Support of Motion of American Meat Institute, et al., For Leave to File *Amici Curiae* Brief in Support of Appellants to be served by first class mail, postage pre-paid to:

Mark B. Stern
Michael S. Raab
Joshua Waldman
Eric D. Miller
U.S. Department of Justice
Civil Division, Room 7256
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

A. Clifford Edwards
Taylor S. Cook
Edwards, Fricle, Anner-Hughes, Cook & Culver
1601 Lewis Avenue, Suite 206
P.O. Box 20039
Billings, MT 59104

Russell S. Frye
Frye Law PLLC
3050 K Street, N.W., Suite 400
Washington, DC 20007-5108

William L. Miller
The William Miller Group, PLLC
3050 K Street, N.W.
Fourth Floor
Washington, DC 20007

I also certify, that on the 11th day of May, 2005, I filed the original and four copies of the foregoing brief by causing them to be sent by Federal Express overnight delivery to:

Ms. Cathy Catterson
Clerk, United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526


Robert Gruwell